

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 7071, and 8587.1 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 210, 215, 220, 5517, 7071, 7923, 8585.5 and 8587.1 of said Code, proposes to amend sections 27.60 27.67, 27.82, 28.28, 28.29 and 28.55, Title 14, California Code of Regulations, relating to bag limits for rockfishes, cabezon and greenlings, and fishery closure process.

Informative Digest/Policy Statement Overview

Existing regulations establish recreational bag and sub-bag limits for rockfish, cabezon and greenlings, and establish provisions for closing the recreational fisheries for lingcod, rockfish, a subgroup of rockfish, and/or California scorpionfish. The proposed regulations will: (1) eliminate the sub-bag limit for shallow nearshore rockfish with in the bag limit for the Rockfish, Cabezon and Greenlings Complex (RCG complex); (2) establish statewide bag limits for rockfish, cabezon and greenlings; and (3) add a number of fisheries to the list of recreational fisheries that the Department of Fish and Game (Department) may close if an annual harvest limit (optimum yield) for lingcod, rockfish, a subgroup of rockfish, and/or California scorpionfish has been exceeded or is projected to be exceeded. In addition, some technical, non-substantive changes are proposed for clarity or consistency.

(1) Eliminate the sub-bag limit for shallow nearshore rockfish (Sections 27.60 and 28.55, Title 14, CCR)
Existing regulations establish a 10-fish bag limit for the RCG complex in the Central and Southern Rockfish and Lingcod Management Areas (RLMA). Within the 10-fish RCG complex bag limit, there is a sub-bag limit of two for shallow nearshore rockfish (black-and-yellow, China, gopher, grass, and kelp rockfishes). The proposed regulations would eliminate the sub-bag limit for shallow nearshore rockfish.

(2) Establish statewide bag and sub-bag limits for rockfish, cabezon, and greenlings (Sections 27.60, 28.28, 28.29, and 28.55, Title 14, CCR)
Existing regulations establish different bag limits for rockfish, cabezon, and greenlings in the Northern RLMA than in the Central and Southern RLMAs. The proposed regulations would establish either the same bag and sub-bag limits for cabezon, greenlings, and all rockfish statewide, or the same bag and sub-bag limits for cabezon, greenlings, and all rockfish except bocaccio statewide. The proposed regulations provide the option of keeping the sub-bag limit for bocaccio at two fish in the Northern RLMA. The bag and sub-bag limits would remain the same in the Central and Southern RLMAs. The proposed regulations would establish a RCG Complex (including all species of rockfish, cabezon and greenlings) bag limit in the Northern RLMA of 10 fish in combination with the following sub-bag limits: bocaccio - either 1 or 2 fish; canary, cowcod, and yelloweye rockfishes – no retention; cabezon – 3 fish; and kelp and rock greenlings – 2 fish in combination.

(3) Modify subsection 27.82(g), Title 14, CCR regarding fishery closures

Current regulations authorize the Department to close recreational fisheries for lingcod, rockfish, a subgroup of rockfish, and/or California scorpionfish in all or part of the Northern, Central, or Southern RLMA when the Department determines that the annual harvest limit established in regulations by the National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries, formerly National Marine Fisheries Service) for lingcod, rockfish, a subgroup of rockfish, and/or California scorpionfish has been exceeded or is projected to be exceeded prior to the end of the year. Under the proposed regulations, recreational fisheries for greenlings of the genus *Hexagrammos*, California sheephead, ocean whitefish, and any of the 82 federal groundfish species (including lingcod, rockfish, a subgroup of rockfish, California scorpionfish, and cabezon) could also be closed by the Department when an annual harvest limit for lingcod, rockfish or a subgroup of rockfish, cabezon* and/or California scorpionfish has been exceeded or is projected to be exceeded prior to the end of the year.

The current regulations only allow for closing a fishery for the entire remainder of the year. The proposed regulations would provide the option of closing a fishery for just part of the year. This would provide the flexibility to open a fishery for an associated species during time periods when it is expected that there

would be no bycatch of the species/species groups for which the annual harvest limits had been exceeded.

(4) Technical non-substantive changes for clarity or consistency

Reference sections were added, where applicable, to the table in subsection 27.60(b)(2), Title 14, CCR, to help the angler or diver learn of any additional regulations that may apply to the species listed in the table.

Section 27.67, Title 14, CCR, currently states that the RLMAs are defined in subsection (b) of 27.82. The regulations adopted by the Commission on December 4, 2003 moved the definitions of the RLMAs to subsection (a) of 27.82. The proposed change corrects this reference.

The name of the federal agency that regulates fisheries has recently changed from National Marine Fisheries Service to NOAA Fisheries. The proposed regulations change the name of the agency in subsection 27.82(g).

The wording of subsections 28.28(a), 28.29(a), and 28.55(a) were modified for consistency.

* On December 4, 2003, the Commission adopted regulations that add cabezon to the list of species for which the recreational fishery may be closed by the Department in-season when the Department determines that the federal annual harvest limit has been exceeded or is projected to be exceeded. (See OAL Notice ID#03-1007-12)

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the City Council Chambers, 333 W. Ocean Boulevard, in Long Beach, California on Friday, February 6, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held the City Council Chambers, 777 Cypress Avenue, in Redding, California on Friday, March 5, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before February 27, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than March 5, 2004 at the hearing in Redding, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. Ms. Marija Vojkovich, Offshore Ecosystem Coordinator, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm/.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of

the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

While the scope of the proposed action is coastwide, we do not expect significant economic impacts to California small businesses, nor to the ability of California businesses to compete with businesses in other states. Individual sport fishermen who target rockfish, cabezon, lingcod, and greenlings will still be able to fish for these species and harvest an individual ocean bag of 20 finfishes (total in combination). However, the legal combination of species under the proposed regulations will change; with the greatest changes being the number of cabezon and greenling that can be retained in waters north of 40°10' North Latitude.

The National Marine Fisheries Service's (now NOAA Fisheries) 2002 data on cabezon and greenling show that, for ocean sport fishermen on commercial passenger fishing vessels and on private boats, these species only comprised about 4.9 percent and 6.7 percent, respectively, of all the rockfish, cabezon, lingcod, and greenlings retained. Consequently, we consider it unlikely that preferences and attitudes for these ocean sportfishing activities will change significantly due to the new sub-bag limits and reductions in numbers of cabezon and greenling retained in the 20 ocean finfish bag limit.

Shore-based anglers and divers account for a significant proportion of the recreational take of cabezon and greenlings. We do not have information on whether the proposed decreased in bag limits for cabezon and greenlings north of 40°10' North Latitude will change the preference and attitudes of shore-based anglers and divers. We expect a negative, but unquantifiable, economic impact on sportfishing shops and tackle manufacturers due to the reductions in the bag limits for cabezon and greenling if shore-based anglers and divers do not shift to fishing for other species.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
- The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: January 6, 2004

Robert R. Treanor
Executive Director